

Wissenbach et al. unlike the claimed apparatus, takes its signals "from a variety of different types of flow sensors, or fluid monitoring sensors, and carry out various control functions. Wissenbach et al. does not estimate a quantity of pumped fluid based on user entered expected flow rate and one or more pumping time intervals as claimed." (Belehradek Decla. ¶6.)

In support of the above quotation from Mr. Behlradek's previously filed Declaration, we note that Wissenbach et al. state:

"A multi-function fluid flow monitoring apparatus capable of measuring fluid flow-related variables of a fluid in a channel on the basis of signals from any one or more of a plurality of different types of flow sensors. Such different types of flow sensors may include, for example, a bubbler-type pressure sensor, a submerged pressure transducer, an ultrasonic transducer, and/or a velocity sensor forming part of an area-velocity sensor system, each of which sensors may be selectively connected to the apparatus as needed to accommodate various monitoring conditions." (Abstract, lines 1-10 Wissenbach et al.)

Wissenbach et al. further state:

"The invention provides an apparatus for monitoring at least one fluid-related variable of fluid flow in a channel, comprising an integral operating unit provided in a unitary case, the integral operating unit including computer means for controlling the apparatus and input means for receiving detected signals related to fluid flow in the channel. The input means is selectively connectable to any selected one or more of a plurality of different types of fluid-sensing means for producing signals related to the fluid flow in the channel." (Wissenbach et al., Col. 3, lines 66 through Col. 4, line 7).

Wissenbach et al. expressly teaches the use of one or more fluid flow sensors for monitoring physical flow in a conduit or channel and using the monitoring signals in carrying out various types of processing. Thus, the intended purpose of Wissenbach et al. is to make actual fluid flow measurements and monitor those signals to carry out various functions.

In proposing a rationale for a *prima facie* case of obviousness, the Examiner has admitted that Wissenbach et al. do not teach:

"circuitry for storing a manually settable fluid flow rate parameter and time interval determination circuitry." (Office Action, page 3, lines 3-4).

The Examiner then goes on to say however:

"it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace program storage memory, data storage memory and real time clock means as taught by Wissenbach et al. in place of the circuitry for storing a manually settable fluid flow rate parameter and time interval determination circuitry of the present invention because the data storage memory of Wissenbach can be manually enter[sic] and settable fluid flow rate parameter by the user, via a menu screen display and keypad". (Office Action, p. 3).

The above rationale is defective and not sufficient to support a *prima facie* case of obviousness at least because the Examiner's proposed modification of Wissenbach et al. renders Wissenbach's device unsatisfactory for its intended purpose (MPEP §2143.02, p. 2100-127, Rev. 1, Feb. 2003).

As stated in the above-noted section of the MPEP:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."

There is no doubt that modifying that Wissenbach et al. as proposed by the Examiner would make that instrument unsuited for its intended purpose of physically measuring fluid flow and responding to fluid flow sensing signals and carrying out processing. Hence, for this reason alone, the outstanding rejections should be withdrawn. Additional reasons follow.

The Examiner's rationale in attempting to establish a *prima facie* case of obviousness is clearly deficient in that the proposed modification improperly changes the principal of operation of Wissenbach et al. As stated in the MPEP §2143.02, p. 2100-127:

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious".

Further, where the proposed modification requires a substantial reconstruction and redesign of the elements shown in the prior art document, as well as a change in the basic principal under which the document's construction was designed to operate, the claimed structure would not be obvious. See MPEP, p. 2100-127.

In the present instance, the Examiner's proposed modification substantially changes the principal of operation of Wissenbach et al. from a sensor based system which responds to actual physical measurements of fluid flow to an estimator which does not respond to physical fluid flow measurements. This modification of the principal of the operation of Wissenbach et al. cannot properly support a *prima facie* case of obviousness. In addition, the Examiner's explanation of the proposed modifications to Wissenbach et al., quoted above represent the "substantial reconstruction and redesign" disapproved of by the MPEP and the Federal Circuit. Such extensive changes clearly teach away from obviousness.

Finally, we note that no suggestion, teaching or rationale has been identified in the Office Action or in Wissenbach et al., which would motivate one of skill in the art to make the ~~modification proposed by the Examiner in arguing that the pending claims are obvious and~~ unpatentable. Indeed, this is clearly a case of hindsight reconstruction. The applicant's own application has been used as a roadmap for purposes of attempting to establish a *prima facie* case of obviousness in support of the outstanding rejections. This is improper and not in keeping with either the decisions of the Federal Circuit or the Manual of Patent Office Examination Procedure.

It is respectfully requested that the outstanding rejections be withdrawn and that pending claims 1-32 and 34-40 be allowed.

Respectfully submitted,

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